1982

Thomas C. Mabey and Louise S. Mabey v. Kay Peterson Construction Co. : Appellant's Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THOMAS C. MABEY and LOUISE S. MABEY, his wife, Plaintiffs and Respondents, vs. KAY PETERSON CONSTRUCTION COMPANY, INC., a Utah corporation, Defendant and Appellant.	
WASATCH CABINET COMPANY, INC., a Utah corporation, Plaintiff, vs. KAY PETERSON CONSTRUCTION COMPANY, INC., a Utah corporation, et al., Defendants.	Case No. 18338

APPELLANT'S REPLY BRIEF

Appeal from the Decision of the Second Judicial District Court of
Davis County, State of Utah
Honorable J. Duffy Palmer, District Judge

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The brief of the Respondents (Plaintiffs Thomas C. and Louise S. Mabey) raises for the first time on appeal issues which are beyond the scope of the brief of Appellant (Defendant Kay Peterson Construction Company, Inc.) and which, it is submitted, Plaintiffs Mabey are not entitled to have heard by this court. In order to address these newly-raised issues and direct the court's attention to the errors in Plaintiffs Mabey's arguments, Defendant Kay Peterson Construction respectfully submits this brief in reply. For convenience and to maintain consistent terminology between this reply brief and Defendant's previous brief, the parties will be referred to

throughout as "Plaintiffs" or "Mabeys" and "Defendant" or "Kay Peterson Construction."

ARGUMENT

POINT I.
HAVING FAILED EITHER TO APPEAL OR CROSS-APPEAL, PLAINTIFFS (AS RESPONDENTS ON APPEAL) ARE NOW PRECLUDED FROM ARGUING FOR AND ARE NOT ENTITLED TO A REVERSAL OF THE TRIAL COURT'S FINDING OF MUTUAL MISTAKE

At the close of trial, the trial court correctly and properly found, based upon the evidence presented, that there had been a mutual mistake in the formation of the contract which was the subject of the litigation between the parties. Notwithstanding this finding (and as pointed out at some length in Defendant's previous brief on appeal at Point I) the trial judge erroneously failed to reform the contract and elected instead to ignore the evidence presented to the court and award damages to both parties based upon amounts prayed for in the pleadings. An appeal was properly and timely filed by the Defendant Kay Peterson Construction. No appeal or cross-appeal was or has been filed by the Plaintiffs Mabey. Nevertheless, the Plaintiffs have utilized the major portion of their Respondent's Brief to argue that the trial court erred in finding a mutual mistake and in granting judgment to the Defendant. Moreover, Plaintiffs have specifically indicated in their brief under the paragraph captioned "Relief Sought on Appeal" that they "seek reversal of the court's judgment in favor of Defendant based upon an alleged mutual mistake of fact . . ." (Resp. Br. at 3).

It is the clear rule of law in Utah, as supported by numerous decisions of this Court, that a party who seeks any relief on appeal other than mere affirmation of the lower court judgment must present to

this Court an appeal or cross-appeal designating that portion of the judgment which is appealed from and the relief requested. Rule 74(b) of the Utah Rules of Civil Procedure provides that when one party files a notice of appeal, other parties may cross-appeal without filing a notice of appeal; however:

> "such [other] party or parties shall file a statement of the points on which he intends to rely on such cross-appeal within the time and as required by subdivision (d) of Rule 75."

Rule 75(d) provides in pertinent part:

> "If the respondent desires to cross-appeal, or if the appellant has filed a statement of the points on which he intends to rely and the respondent desires to have the appellate court consider other or additional matters, the respondent shall, within ten days after the service and filing of appellant's designation, or if the parties stipulate as to the record on appeal, within ten days from the filing of such stipulation, serve and file a statement of respondent's points, either by way of such cross-appeal or for the purpose of having considered other or additional matters than those raised by appellant." (Emphasis added.)

The failure of a respondent on appeal to file properly or timely a cross-appeal results in waiver of the respondent's right to have the court review or modify the trial court judgment. In Terry vs. Zions Cooperative Merchantile Institution, 617 P.2d 700 (Utah 1980), this court considered on rehearing the issue of whether a respondent on appeal is entitled to affirmative relief when no valid cross-appeal exists. The plaintiff in that case, Mrs. Terry, had obtained a judgment against the defendant, Z.C.M.I., for damages resulting from false arrest and malicious prosecution. The jury award of $15,000.00 punitive damages was reduced by the trial judge to $2,000.00 and judgment was entered accordingly. The defendant

appealed from the lower court judgment against it and on appeal this court reinstated the entire punitive damage award of $15,000.00. On petition for rehearing the defendant pointed out that the plaintiff was not entitled to reinstatement of the punitive damage award, because the plaintiff had not filed a valid cross-appeal from the lower court's judgment reducing the award to $2,000.00. (Plaintiff had untimely filed a cross-appeal, but had withdrawn the same after a motion to dismiss the cross-appeal was made by the defendant.)

The plaintiff presented two arguments to this Court in response to the defendant's claim that plaintiff was not entitled to have the punitive damage award increased:

1. Plaintiff could either cross-appeal or request the court in her respondent's brief to reinstate the original amount of the verdict; and

2. Because the defendant had appealed from the entire judgment, including the award of punitive damages, plaintiff could address the entire subject matter of the appeal without the necessity of a cross-appeal.

This court reviewed the plaintiff's contentions and rejected them both holding:

> "If he [the appellee] wishes to argue for alteration of the judgment to enlarge his rights, he must file his own notice of appeal or petition within the time provided by the rules, i.e., in the usual parlance, he must file a cross-appeal or cross-petition . . . .
>
> What the plaintiff sought was to increase the punitive damages, which thus constituted a request for an affirmative change of the judgment for her benefit . . . ." Supra at 702 (emphasis by the court).

As a consequence of this holding the court reversed its order reinstating

the entire punitive damage award and merely reaffirmed the trial court's prior judgment.

The ruling in Terry that a respondent on appeal may not seek to enlarge his own rights without first filing a cross-appeal, follows substantial precedent set in earlier Utah decisions. In Hartford Accident and Indemnity Company vs. Clegg, 103 Utah 414, 135 P.2d 919 (1943), this Court refused to review assignments of error raised by the respondent who had failed to file a cross-appeal, stating:

> "No affirmative relief can be granted to respondent, even if he were entitled to such, because no cross-appeal has been filed." 103 Utah at 427 (emphasis added).

In his concurring opinion in Jensen vs. Freeman Gulch Mining Company, 109 Utah 163, 166 P.2d 250 (1946), Justice Wolfe observed that even though the lower court judgment in favor of the plaintiff-appellant was unsupportable, it would be affirmed on appeal because the defendant had not filed a cross-appeal (109 Utah at 171). Compare also Peterson vs. Peterson, 112 Utah 554, 190 P.2d 135 (1948), and Reimann vs. Baum, 115 Utah 147, 203 P.2d 387 (1949), wherein this court refused to hear issues not properly raised by cross-appeal.

There can be no doubt that Utah law imposes upon a respondent to an appeal the responsibility to raise by cross-appeal any issue which will result in affirmative relief or enlargement of rights on behalf of the respondent. If there is no cross-appeal, a respondent may only seek affirmation of the lower court judgment. The Utah rule requiring cross-appeals is neither unusual nor extraordinary. In fact, similar, if not

identical, positions have been taken by the appellate courts in every neighboring jurisdiction.

In Booras vs. Uyeda, 56 Ore.App. 834, 643 P.2d 413 (1982) the Oregon appeals court had before it an appeal by the plaintiff from a lower court judgment of money damages. The plaintiff had brought an action in equity against the defendant for specific performance on a contract. The trial court had found the contract to be valid and enforceable, but denied specific performance on the ground it was "impractical, difficult and time consuming." The plaintiff appealed from the damage award demanding that he be granted specific performance on the contract instead. No cross-appeal was filed by the defendants; however, on appeal the defendants argued that the trial court erred in finding the contract specifically enforceable because the plaintiff had failed to prove a legally enforceable contract. The plaintiff pointed out that the defendants could not challenge the court's finding without having first cross-appealed. In accepting the plaintiff's contention and rejecting the defendants' argument, the court noted:

> "It is well settled that, although this court reviews a case in equity de novo, a respondent who has not cross-appealed cannot obtain here a judgment more favorable to him and less favorable to the appellant than the judgment entered below (citing cases)." 643 P.2d at 413

In Maricopa County vs. Corporate Commission of Arizona, 79 Ariz. 307, 289 P.2d 183 (1955) the appellee attempted in its brief to attack the lower court judgment without having filed a cross-appeal. The Arizona Supreme Court refused to consider the points raised by the appellee, holding instead that where an appellee seeks by cross assignments in its brief to attack a judgment with a view of either enlarging its own rights or

lessening the rights of its adversary, it must cross-appeal by conforming with rules of court and by giving notice of such cross-appeal. 289 P.2d at 185.

As to additional jurisdictions, see: Lepel vs. Lepel, 93 Idaho 82, 456 P.2d 249, 254 (1969) ("If a respondent, in an appeal, desires to have errors against himself corrected, he must present them to [the appellate] court by way of cross-appeal"); James vs. City of Pittsburg, 195 Kans. 462, 407 P.2d 503, 505 (1965) ("[The successful party in the lower court is required] to file a cross-appeal before he can present adverse rulings for review"); Trollope vs. Koerner, 21 Ariz.App. 43, 515 P.2d 340, 343 (1973) ("[A]ppellants should not have recovered [any judgment] . . . However, since no cross-appeal was taken by appellees, this Court is obliged to affirm the damage award as handed down by the trial court"); Chavira vs. Carnahan, 77 N.M. 467, 423 P.2d 988, 990 (1967) ("[A]ppellee has not filed a cross-appeal and any objection to the trial court's instructions can not be properly raised for consideration by way of his answer brief"); Board of County Commissioners of Arapahoe County vs. City and County of Denver, 547 P.2d 249, 251 (Colo. 1976) ("[A]n appellee may not attack a decree with a view either to enlarging his rights thereunder or lessening the rights of his adversary unless a cross-appeal has been filed"); Tindle vs. Linville, 512 P.2d 176, 179 (Okla. 1973) ("Parties who fail to [cross-appeal] are deemed to acquiesce in the judgment of the trial court. They cannot be heard, on appeal by others, to complain of errors below, and can demand no relief from the appellate tribunal").

The comments advanced by the courts in refusing to hear or rule on

issues not properly raised by cross-appeal offer clear support for the law in this jurisdiction; namely, a respondent who desires on appeal that the reviewing court act other than to affirm the lower court decision, must first file a cross-appeal, even if the lower court ruling is in error or unsupportable. This rule applied equally in equity cases where the facts are reviewed by the appellate court and in cases at law, and cannot be satisfied by merely raising arguments for the first time in the respondent's brief. Proper and timely filing of the pleadings and notices specified in Rule 74(b) and 75(d) of the Utah Rules of Civil Procedure is a mandatory prerequisite to any claim by a respondent of error at the trial level.

Turning to the position of the Plaintiffs Mabey in the present action as outlined in their respondents' brief, one notes that Plaintiffs have specifically requested "reversal of the court's judgment in favor of defendant based upon an alleged mutual mistake of fact" (Resp. Br. at 3) and that Plaintiffs have argued at some length (Point III; Resp. Br. at 14 through 26) for such reversal, claiming the trial court erred in finding mutual mistake. A thorough review of the file and an examination of the court docket indicates that not only have Plaintiffs failed to file a timely or adequate cross-appeal, they have failed to file any sort of cross-appeal at all! It is obvious from their arguments against the finding of mutual mistake, that Plaintiffs are requesting this court to grant relief on appeal which, if granted, would enlarge their own rights or lessen those of the Defendant Kay Peterson Construction. Plaintiffs, due to their failure to cross-appeal, are not entitled to such

relief, nor are they even entitled to a review of their claims or arguments. This court should refuse to consider Plaintiffs' arguments against mutual mistake, and should instead reform the contract to reflect the intention of the parties, as the trial court failed to do.

With respect to the question of reformation, one final observation is pertinent. Plaintiffs have nowhere in their brief disputed or indicated any opposition to the arguments advanced by the Defendant that the trial court erred when it failed to reform the contract to the parties' understanding. Moreover, Plaintiffs have not disputed in their brief Defendant's contention that the proper remedy upon a finding of mutual mistake of fact is reformation of the contract to reflect the intention of the parties. Plaintiffs offer no legal authority or argument in their brief in support of the trial court's award of damages both to the Plaintiffs and Defendant in total disregard to the obvious consequences of the mutual mistake. In fact, having found mutual mistake in the formation of the contract, the trial court's judgment thereon is totally unsupportable in the law. Reformation of the contract is the proper remedy and judgment should be entered by this Court accordingly.

POINT II.
THE TRIAL COURT CORRECTLY AND PROPERLY FOUND THAT THERE WAS A MUTUAL MISTAKE OF FACT IN THE FORMATION OF THE WRITTEN CONTRACT

While it is the firm belief of the Defendant that the question of whether the trial court erred in finding mutual mistake is not properly before this Court, Defendant finds itself compelled nevertheless to respond to the erroneous and misleading arguments advanced by the Plaintiffs in their brief. Contrary to the assertions of Plaintiffs, the evidence presented at trial not only clearly and convincingly establishes the mutual mistake of the parties in the formation of the written contract, it stands unopposed in support of that determination. There is no contradictory evidence in the record.

Plaintiffs have in the Respondents' Brief argued all around the court's holding of mutual mistake, without ever addressing the issue directly. Plaintiffs have attempted to claim the issue was not properly before the court (Resp. Br. Point III A, at 14-16). They have argued that the mistake was not "mutual" (Resp. Br. Point III B, at 16-17). They have alleged there was insufficient evidence of a mutual mistake (Resp. Br. Point III C, at 18-20). Finally they have claimed there was no mistake at all (Resp. Br. Point III D, at 20-23). None of Plaintiffs' arguments address the obvious conclusion reached by the trial judge from the clear and undisputed testimony given by both the Plaintiff, Mr. Mabey, and Defendant's President, Kay Peterson; namely that the parties intended to enter into a contract which would set forth the purchase price only of the improvements on Lot 1, not of the lot itself (Plaintiff Mabey's testimony, T60-62;

Defendant Peterson's testimony, T116-117). The written contract in the form of the Earnest Money Agreement (Pl. Ex. C) with the adjusted price term did not, as a result of the mutual mistake of the parties, reflect that intention.

Defendant in its previous brief and Plaintiffs in their brief have both referred to the rule in Jensen vs. Manilla Corporation of the Church of Jesus Christ of Latter-Day Saints, 565 P.2d 63 (Utah 1977), which states that a written instrument which fails to conform to what the parties intended may be reformed by the court to reflect that intention. Notwithstanding the fact that Defendant in its previous brief meticulously and carefully explained how the evidence at trial established the parties' intentions (App. Br. A and B at 14, 15), Plaintiffs have claimed in their brief that Defendant failed to show what the parties intended. In support of this proposition Plaintiffs make the remarkable claim that the record does not reflect the Plaintiffs' intention to pay $127,000.00 for the house and improvements. Admittedly the figure of $127,000.00 is an extrapolation from the evidence presented to the court; however, the existence or non-existence of that number in the evidence does not alter the real intentions of the parties. The record is replete with testimony establishing that the contracting parties intended the purchase price to be whatever the total construction cost of the home and the improvements was, less any amounts attributable to the lot itself. The uncontradicted, undisputed evidence, in the form of the testimony of both Plaintiff Tom Mabey and Defendant's President, Kay Peterson, confirms that:

1. The reduction in the original purchase price of $134,068.40 (which price was agreed to on March 20, 1980) (Pl. Ex. C) was made because both parties believed that figure included the full price of the lot ($27,000.00) as well as the cost of the improvements.

2. The reduced price of $109,000.00 was intended by the parties to reflect the deletion of the total lot price (in the form of two payoff amounts, $18,000.00 and $9,000.00) thought to be included in the $134,068.40 figure.

3. In fact only the $9,000.00 lot payoff amount was included in the $134,068.40.

4. Had the contract actually reflected the parties' intention, the purchase price of $134,068.40 (plus an approximate $2,000.00 increase added by Tom Mabey as a "buffer") would have only been reduced by $9,000.00 instead of $27,000.00 as the parties actually proceeded to do.

The inescapable conclusion is: the parties both intended the price figure of the contract to evidence the cost of the home and improvements only, and the reduced price figure on the contract of $109,000.00 did not reflect that intention; it was $18,000.00 too low.

A clearer example of "mutual mistake" would be hard to find. Jensen vs. Manilla Corporation of the Church of Jesus Christ of Latter-Day Saints, supra. The mutual mistake was obvious to the trial judge. It is obvious from the record. Only the Plaintiffs appear confused on this issue. The trial court's finding should not be disturbed on appeal.

POINT III.
PLAINTIFFS FAILED TO PRESENT AT TRIAL ANY PROBATIVE EVIDENCE SUFFICIENT TO ESTABLISH A BASIS FOR AN AWARD OF DAMAGES RESULTING FROM ALLEGED DEFECTIVE WORKMANSHIP

In Defendant's prior brief on appeal, Defendant pointed out that the Plaintiffs had failed at trial to present any evidence on which an amount for claimed damages resulting from alleged defective workmanship could be established "with reasonably certainty." Plaintiffs have argued in the Respondents' Brief that the evidence presented concerning the amount of damages (testimony of Mr. Mabey) was competent and credible, hence it was also sufficient and reasonably certain (Resp. Br. Point I at 7-11). Through such falacious reasoning Plaintiffs seek to perpetuate here the error made by the trial court, which in awarding damages based on Mr. Mabey's testimony, apparently relied on what it viewed as "competent" evidence to establish factual conclusions which must be based on "probative" evidence. The failure of Plaintiffs to grasp the distinction between competent and probative evidence, both at trial and in their brief on appeal, raises some concern that Plaintiffs' confusion may cloud this Court's review of this matter. The following discussion of the law is presented with a view to clarifying the misconceptions which Plaintiffs have attempted to propound.

Plaintiffs have correctly cited in their brief the rule on "reasonable certainty" of damages stated by this Court in Security Development Company vs. Fedco, 23 Utah 2d 306, 462 P.2d 706 (1969). However, it is apparent from a review of Plaintiffs' arguments that Plaintiffs have not only

misunderstood the rule they cite, they have misapplied it as well. Paraphrasing the damage rule of Security Development, supra, it becomes: a damage amount need not be determined exactly, provided a reasonable basis for calculation of the damage amount is afforded from the evidence. As to what constitutes a "reasonable basis for calculation," this Court in Security Development referred with approval to the explanation offered by the United States Supreme Court in Lavender vs. Kurn, 327 U.S. 645, 66 S.Ct. 740, 90 L.Ed. 916 (1945). That court in discussing jury determinations of damages and the evidence necessary to support such verdicts noted:

> "Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear." 327 U.S. at 653 (emphasis added).

In other words, even though the rule of certainty in damage awards allows the amount of an award to be "approximate" or "inexact," it must nevertheless be supported by "probative" evidence.

The concept of "probative" facts (as distinguished from "ultimate" facts) and the concept of "probative" evidence as opposed to "reliable or competent" evidence have been thoroughly explored in numerous court opinions. From those court decisions the following definitions may be derived. Considering first "probative" facts, they are that part of the evidence from which ultimate and decisive facts may be inferred. Ultimate facts are those which the evidence (probative facts) proves at trial. Ultimate facts are not the same as the evidence (probative facts) required to prove those ultimate facts. Brown vs. Hall, 226 N.C. 732, 40 S.E.2d 412 (1946); Daniel vs. Gardner, 240 N.C. 249, 81 S.E.2d 660 (1954). Stated

in another way, probative facts provide the basis from which the ultimate, decisive facts may be deduced or concluded; they are not the ultimate facts themselves.

Turning to the term "probative" as it is applied to evidence, the courts have offered the following explanations.

> "[Probative evidence is] testimony of substance and relevant consequence not vague or uncertain . . . ['probative'] has reference to the substance of the testimony generally and not the credibility of the witness." Liquor Control Commision vs. Bartolas, 10 Ohio Misc. 225, 225 N.E.2d 859, 862 (1963) (emphasis added).

> "['Probative'] relates to the evidentiary value of the testimony and other evidence in an analytical sense, having depth and being more than merely superficial or speculative." Sowers vs. Ohio Civil Rights Commission, 20 Ohio Misc. 115, 252 N.E.2d 463, 478 (1969).

The term "probative," therefore, as applied to evidence refers to the adequacy or sufficiency of the evidence to support the ultimate factual conclusion to be established.

Applying the concepts of "probative" facts and evidence to the rule that damages may be approximate or inexact so long as there is a reasonable basis for calculation thereof, it becomes clear that the rule really provides that the amount of damages is the "ultimate" fact which the finder of fact must determine or establish from the probative facts, i.e., those substantive parts of the evidence which establish a basis for calculating and thereby determining that ultimate damage amount. The need for substance and depth in the facts presented as a basis for the damage award, even when the award itself can only be approximate, is obvious from the rule itself. While the evidence must also be competent and

credible, if its lacks substance or is merely superficial, it cannot be "probative" and cannot support the ultimate fact in issue, namely the amount of damages to be determined.

Analyzing the evidence presented by the Plaintiffs during the trial of this cause in the light of the foregoing discussion, it is apparent that Plaintiffs presented no probative evidence to the court at all. The testimony of the Plaintiff Tom Mabey, offered to establish the alleged damage amount, was couched in terms of the "ultimate" fact in issue only (T-34,35). Mr. Mabey testified that damages were "about $5,400.00." Plaintiffs presented no probative facts, no evidence of substance, in support of that claim to damage amount and Plaintiffs provided no information or facts as a basis from which the damage amount could be calculated or inferred. Mr. Mabey did testify that his claimed damages were figured at "about $17.00 an hour," however no evidence was provided as to how the per hour rate related to the damage figure of $5,400.00. In other words, what the Plaintiffs provided to the court as "evidence" was the very factual conclusion (devoid of any supporting evidence) which the court should have reached from the probative evidence which was not provided. As the United States Supreme Court has stated, "absence of probative facts to support the conclusion reached [constitutes] reversible error." Lavender v. Kurn, supra at 653.

The trial court assumably and the Plaintiffs (as indicated by the arguments in their brief on appeal) clearly failed to grasp and properly apply the legal principles described herein. Plaintiffs instead have

presumed that "competent" evidence is the same as "probative" evidence and have argued that if the evidence was competent, it must be sufficient. The definitions and discussions set forth herein clearly show the contradictory and illogical nature of that position. This court should not perpetuate the error of Plaintiffs and the trial court. The trial court's award of damages must be reversed as being unsupported by the evidence.

One final observation should be made in connection with the issue of damages for faulty workmanship. The trial judge, in ruling for Plaintiffs on this issue, added the stipulation that the judgment in favor of the Plaintiffs would be set aside if the Defendant satisfied the State [Board of Contractors] relative to repairing the alleged defects "within one month" (T-132). The judge allowed that such an order could "complicate" things, however his apparent intention in awarding such relief was to provide the Defendant with motivation for making such repairs as the State Board found necessary. (The judge made it clear that the Defendant need not satisfy the Plaintiffs in this regard.) (T-132.) Although the transcript of the court proceedings and the court's minute entry (R-37, 188) make no such reference, the judgment prepared by counsel for the Plaintiffs added the further stipulation that the one month period would be "30 days" and would run from the date of the trial (R-224).

The judgment was signed by the court on February 26, 1982 without comment or change, following a hearing on Defendant's objections to findings of fact and conclusions of law (R-45, 222). Contrary to the statement of facts in the brief of Plaintiffs (Resp. Br. at 7) Defendant

contacted Plaintiffs relative to making repairs and was refused the opportunity by Plaintiffs to do so. Moreover, the matter of the repairs was resolved to the satisfaction of the State Board of Contractors prior to the date the judgment was actually signed by the court.

CONCLUSION

The Plaintiffs, as Respondents, are required under the rules of procedure and the law of this jurisdiction to file an appeal or cross-appeal if they wish modification of the trial court judgment in any manner which may enlarge their rights or decrease those of the Defendant. Their failure to comply with the rules and law in this regard precludes them from any relief from the trial court finding of mutual mistake. In any case, the record of the proceedings below clearly establishes that the trial court correctly and properly found that the parties' written agreement did not reflect their intentions as a result of a mutual mistake of fact.

The Plaintiffs failed to provide any probative evidence at trial upon which the trial court could base an award for damages relative to the alleged defective workmanship. The trial court's judgment in that regard must be reversed.

RESPECTFULLY SUBMITTED this 3rd day of September, 1982.

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CERTIFICATE OF SERVICE

I hereby certify that I served two (2) true and accurate copies of the foregoing Appellant's Reply Brief upon counsel for the Plaintiffs and Respondents, George S. Diumenti, Esq. of and for DIUMENTI, HARWARD & NELSON by mailing the same, postage prepaid, to their offices at 505 South Main Street, Bountiful, Utah 84010.

DATED this 3rd day of September, 1982.

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